

DATE: October 12, 2004

FILE REF: NR 135/NMAC

TO: Nonmetallic Mining Advisory Committee (NMAC)

FROM: Tom Portle

SUBJECT: Minutes of July 29, 2004 Nonmetallic Mining Advisory Committee Meeting

Following is a report on the main points from the meeting of the NR 135 Nonmetallic Mining Advisory Committee ["NMAC"], held on July 29, 2004 from 10-4 at the Wisconsin Highway Patrol District One Headquarters Building in DeForest, WI.

NMAC members present: Jim Burgener, Bruce Brown, Sue Courter, Mike Erickson, Ron Garrison, Marty Lehman, Ed Reesman, Bryce Richardson, WALCE & Gary Werner

Sitting in for NMAC member: None.

NMAC members not present: Matt Stohr

WDNR Staff Present: Dan Graff, Phil Fauble, Dave Misterek, Larry Lynch and Tom Portle

Others Present: Marty Billner, Northern Environmental, Brian Endres & Clint Weninger, Payne & Dolan; Dean Graff and William Schuster, Door County; Pat Osborne, Aggregate Producers of Wisconsin, Beth Klotz & Gerry Kokkoue, Jefferson County; Jen Schuetz, Kramer Co., Pat Stevens Wisconsin Transportation Builders Association, Wendy Giese, Fond du Lac County.

Main points of discussion, motions and any decisions or necessary "follow-up activities" are presented below:

(Agenda items in ► **bold**)

► **Welcome & Introduction:** Tom Portle went over the meeting ground rules and proposed a slight agenda change

10:00 **Welcome, Housekeeping,**

- Re-appointment letters (Bruce Brown - WGNHS, Marty Lehman - Badger MC),
- Minutes of January 29 Meeting approved

► **Go Around**

Marty Lehman - Things are OK in general but the loss of a Regulatory Authority (RA) contact in one county means Badger is experiencing a period of transition.

Bruce Brown - Departure of Mike Blaska from Smart Growth process

Ed Reesman - encourages Pat Stevens & Pat O. to work toward speedy replacement of Mike Blaska.

Mike Erickson - Mike is concerned that language pertaining to the one-acre exemption in the NR 135 is not in parallel with the legislative intent. (see code revision item).

► Update on the *Comprehensive Planning Mineral Resource (Smart Growth/Registration) Workgroup* (NMAC Subcommittee) - Tom Portle

Tom Portle gave a brief overview and background including the make-up and purpose of the workgroup. The group was formed in response to a NMAC motion at the August 2002 meeting.

Bruce Brown - Bruce thinks that progress has been made on enhancing the availability of State agency data to users but - What is needed is a "reality check - is anyone using this data to move things ahead?" While Mike Blaska was pushing this Bruce felt it was hard to discern what effect this had in DOA.

Gary Werner has been working on the Dane County work group on this matter and indicated that things have gone well in integrating such data into the planning process. **Sue Courter** has assisted in providing needed information into the process.

Pat Stevens - It can work to keep 11th hour issues out of the mix.

Note: Bruce Brown, Sue Courter & Tom Portle participate in the East Central Wisconsin Regional Planning Commission (ECWRPC) process. Participation is via technical committee currently working on the Geologic Resources portion of the Natural Resources Element of the Regional Comprehensive Plan. The ultimate goal is to come up with a planning model that counties can use to properly consider planning for future mineral resource needs, rather than simply accounting for existing operations.

► **Mike Erickson** (during the "go-around") made the *Announcement of a Roundtable I & E Meeting* (Similar to previous Fond du Lac meeting) - sponsored by WCA, APW and WTBA to be held November 10 in Stevens Point: Audience - RA's & industry **Tom Portle** handed out a "draft" agenda for the meeting.

► 10:40 Legislative Update

NR 340 financial assurance (AB 655 – WI Act 118) - **Tom Portle** briefed the NMAC on how changes to NR 340 financial assurance options were made to nearly as possible to match NR 135. These were included in AB 655 signed into law and were effective in February.

Smart Growth notification (AB 728 – WI Act 307) - **Pat Osborne** - owners of land registered as containing a nonmetallic mineral deposit under NR 135.53 - .64 are affected. They must notify

the jurisdiction engaged in Smart Growth and in turn, must receive notification of any changes that might affect them.

Duplicate financial assurance (AB 732 – WI Act 308) - Pat Osborne - in case where there are duplicate financial assurances in place the NR 135 RA must provide a credit to the permittee reflecting this.

High capacity well regulation (AB 926 – WI Act 310) Pat Stevens provided a summary and possible implications.

Exemption from nonmetallic mining reclamation - "Pond Exemption"

Tom Portle updated the NMAC that AB 411 "Pond Exemption" had been vetoed.

► **Letterhead for NMAC**

Tom Portle handed out several versions of the letterhead that had been worked up by Kay of Payne and Dolan who was kind enough to assist in this process. At the end of the meeting these were collected and the choice - forwarded to Kay.

► **Update on Door County Meeting(s)**

Tom Portle gave a chronological account and short update regarding actions (meetings and other efforts have resulted in the resolution of numerous issues) the DNR has taken at the request of the NMAC at its January 29 meeting:

April 14	DNR staff (Dan, Dave & Tom) met with Door County staff (Schuester, Graff) and Counsel (Grant Thomas)
April 15	Dan Graff & Tom Portle met with PCI & Counsel
May 10	Conference Call with County staff, Company
June 2	DNR staff (Dan, Dave Misterek & Tom) attended Door County Land Conservation Committee in Sturgeon Bay
July 29	Report to NMAC

In addition, the NMAC heard from Clint Weninger of Payne and Dolan and William Schuester of Door County. Others participating in a brief discussion of the detail and possible ways to solve remaining issues were Ed Reesman, Bruce Brown, Gary Werner and Sue Courter.

Mr. Schuester expressed concerns about the Door County discussion at the previous NMAC meeting. Gary Werner and Sue Courter assured him that the NMAC was not discussing substantive issues but rather was looking for potential solutions. Also, the NMAC desired to have Door County present at the next discussion of the matter.

Clint Weninger - Door County meetings have resulted in the resolution of a dozen or issues to the point that groundwater issues are the only remaining consequential problem. Groundwater monitoring well requirements are still, in his opinion, exceeding NR 135 standards.

► **Is it time to get to work on changes to NR 135?**

INTRODUCTION *to discussion of Administrative Code changes - it is approaching time to take stock of what we have learned from the first 3 years of NR 135 Program implementation and consider any appropriate code changes.*

▪ **Alternative Approaches to Financial Assurance** - Brought up at previous NMAC meeting (see minutes from January 29, 2004 meeting).

Jim Burgener added that he had done a survey of his WCCA contacts as to the need for additional alternative FA options and had only received one response.

Hybrid FA- lien plus flexible arrangement Variation on NR 135.40 (5) Multiple Projects under one (- allow less than 100% coverage, at the discretion of the RA - where risk is negligible due to enough valuable sites with adequate reserves of marketable material (economics of scale of contractor performing reclamation) Pat said that the above hybrid model contained much of the elements of the risk pool approach except that it was for only one company in one county.

• **FA Statewide risk pool** tool could act as an "insurer of last resort" - especially when a surety bond cannot be obtained. Would involve statutory change.

Objectives:

- Provide a more affordable and reliable FA tool
- The FA tool should be flexible
- The FA tool should fit in with and complement the existing FA options (not disrupt status quo array of options)
- Participation of operator should be totally voluntary however the RA would have to accept this FA mechanism.

QUESTION AREAS:

- Administration of the risk pool by DNR or DOA, if possible, would need to be a key ingredient. This suggests sending it "upstream" to DNR (Pat acknowledged that this may be difficult in the current budgetary times. Advantage - create efficiency in review and processing by concentrating the administration -currently 90+ RAs do this- at one level/entity - probably the DNR or DOA.
- So far Pat has been unable to find a private sector underwriter to deal with the risk pool.
- The NMAC asked Pat to do more research into this prior to the next meeting.

- **Jim Burgener** suggested that RA's might do an evaluation, collect a fee for the service, then subsequently forward their review to the DNR or DOA (the state entity responsible for the risk pool program).

LUNCH

AFTERNOON 1:15

► Code changes CONTINUED

- Clean-up errors, remove items no longer relevant or necessary
Eliminate NR 135.39 fee tables 2 and all reference to "existing mine" and "8 months after December 1, 2000" (see below for other definitions than need to be addressed).
- Eliminate items that can no longer be used (the option where existing mines could obtain a "automatic" permit in NR 135.21) - It would be best, for the sake of clarity, to include a note regarding the previous option for "automatic" permits.
- Should DNR fees in Table 1 be increased to reflect cost increases in the 6 + years since the tables were drafted?
- Definitions/ Others - for example "municipality" to include 'county'.
- Changes to the 1-acre exemption (Also see Mike Erickson Comment in "Go-around" above).

► Input from partners and public (5 min. per person)

Both Clint and Marty Bilner indicated that there are some cases where Reclamation permits will not be issued in accordance with the time frame given in NR 135.21 (1) (b). In some cases the code provision or granting an extension due to "extenuating circumstances" as per NR 135.21 (1) (c) may come into play. In another jurisdiction it is possible that the RA may take more severe action regarding conditions attached to the "automatic reclamation permit" and its relationship to continuing mining operations.

► Any other business (as permitted by law)

► *Input on NR 135 Program Implementation Issues needing attention*

(Now a regular item - to be used to generate a list of items that need attention)

► *Feedback*

Although feedback was limited **Jim Burgener** and **Mike Erickson** spoke to the overall good work and that the meeting accomplished what was intended.

► **Next Meeting**

The NMAC decided to meet again **in 6 or 7 months** - January 27, 2005 was suggested. All agreed that the next meeting should again be held in DeForest, WI.

Partial List of Agenda Items for Next Meeting:

- Report from the Registration Workgroup.
- Notice of Audits to allow for Operator Input (Suggested by Ron Garrison email of 7/28/04)

Follow-up from January 29 meeting:

Tom Portle sent out an email on February 6, 2004 requesting examples of successful reclamation but received no replies.

► **Adjourn** about 3 PM.